CF0000060105

(2)

Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR.

CRIMINAL APPEAL No. 1001 of 1998

CRIMINAL APPEAL U/S 374(2) OF CRIMINAL PROCEDURE CODE

Appellant-
(In Jail)

1/ Somaru @ Burka
s/o Mosu, aged about 30 yrs,

2/Lakhmu,
s/o Mosu, aged about 25 yrs,
Both resident of vill-Dewada,
P.S. Bhanpuri, Distt-Bastar.

6832
25.4.98
P. Bhexat
Advocate

Vs-

Rto. A.R.

Respondent: State of Madhya Pradesh
through-P.S. Bhanpuri, Bastar

CRIMINAL APPEAL U/S 374(2) OF THE CRIMINAL PROCEDURE CODE

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(13)

आदेश पत्रक

मामला क्रमांक Cr-Rev. 1001/98 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:

HON'BLE MR. L.C. BHADOO &
HON'BLE MR.DHIRENDRA MISHRA, JJ

24.02.2006

Smt. Savita Tiwari, Advocate for the appellants.

Shri U.N.S. Deo, Additional Public Prosecutor with Shri M.P.S. Bhatia, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais.*

Per L.C. Bhadoo, J.

By this appeal under Section 374(2) of the Cr.P.C. accused/appellants Somaru @ Burka & Lakhmu have questioned the legality & correctness of the judgment of conviction and order of sentence dated 24.2.1998 passed in Sessions Trial No.156/97 by which learned Special Judge, Jagdalpur after holding the accused/appellants guilty for committing murder of Somaru @ Bulku convicted each of the accused under Sections 302 & 450 of the Indian Penal Code and sentenced each of them to undergo imprisonment for life and R.I. for two years, respectively. It was also ordered that both the sentences shall run concurrently.

The prosecution case, in brief, is that accused persons are the nephew of deceased and there was some land dispute between the deceased and accused persons. On 28.1.1997 at about 8.00 p.m. Somaru @ Bulku and his wife Kade @ Kudgudin were taking dinner in their house, accused/appellant Somaru @ Burka carrying axe in his hand and accused/appellant Lakhmu carrying torch & club in his

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hands entered the house of Somaru @ Bulku, accused Somaru @ Burka assaulted the deceased with the axe and accused Lakhmu with the club and committed his murder. When Kade @ Kudgudin, wife of Somaru @ Bulku tried to intervene, she was also attacked, therefore she being frightened ran away and on the next day morning she gave information to the villagers on which Sukhlal (PW-1) gave merg intimation (Ex.P-2) to the Police Station Bhanpuri. Receiving this merg intimation, Station House Officer, Police Station Bhanpuri registered the F.I.R. (Ex.P-1), left for the scene of occurrence and after giving notice to the Panchas prepared the Panchnama (Ex.P-3) of the dead body of deceased Somaru @ Bulku. He also took into possession the blood stained soil and plain soil from the place of occurrence under Ex.P-4 and a shawl under Ex.P-5. Accused Somaru while in the police custody gave memorandum (Ex.P-8) and in pursuance of that weapon of offence i.e. axe was recovered under Ex.P-9. Accused Lakhmu also gave memorandum and in pursuance of that a wooden club was taken into possession under Ex.P-11. Lungi of accused Somaru was taken into possession under Ex.P-12. Baniyan was taken into possession under Ex.P-13. Body of deceased was sent for postmortem examination under Ex.P-18 to Primary Health Centre, Bhanpuri, where Dr. K.S. Paikra (PW-4) conducted the postmortem on the body of deceased Somaru @ Bulku and prepared the report Ex.P-14. As many as 15 incised wounds were found on the body of deceased Somaru @ Bulku and there was swelling on the chest. Site plan (Ex.P-22) was prepared.

After completion of investigation, charge sheet was filed in the Court of learned Chief Judicial Magistrate, Jagdalpur who in turn

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committed the case to learned Sessions Judge, Jagdalpur from where learned Special Judge, Jagdalpur received the case on transfer for trial. The prosecution in order to establish the charge against the accused persons examined six witnesses. Statements of accused persons were recorded by learned Special Judge under Section 313 of the Cr.P.C. in which they denied the prosecution evidence and stated that they are innocent and have been falsely implicated in the crime.

Learned Special Judge after hearing the Additional Public Prosecutor and counsel for accused persons convicted and sentenced the accused persons as mentioned above in Para-1 of this judgment.

Homicidal death of deceased Somaru @ Bulku is not in dispute.

We have heard Smt. Savita Tiwari, Advocate for the appellants & Shri U.N.S. Deo, Addl. Public Prosecutor with Shri M.P.S. Bhatia, Panel Lawyer for the State/respondent.

As far as involvement of the accused/appellants in the crime in question is concerned, learned counsel for the accused/appellants argued that 15 incised wounds caused by sharp edged weapon were found on the body of deceased Somaru @ Bulku and there was one contusion on the chest. Therefore, no offence was made out against accused/appellant Lakhmu, as he is said to have assaulted deceased with club, whereas, accused Somaru @ Bhurka is said to have assaulted with axe. She further argued that incident happened in the evening and there were independent witnesses, but no independent witness has been examined by the prosecution. She further argued that accused/appellants have been implicated in a false crime on account of animosity arising out of land dispute.

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On the other hand, learned Additional Public Prosecutor Shri Deo, with Shri Bhatia, Panel Lawyer for the State supported the judgment of trial Court.

In this case, the witness namely Sukhlal (PW-1) & Arjun (PW-2) have turned hostile and the conviction is based on the solitary evidence of PW-6 Kade Bai, wife of deceased Somaru @ Bulku, who has stated that on the fateful evening she and her husband were taking dinner, at that time accused Somaru holding axe in his hand and accused Lakhmu holding club & torch in his hands entered the house and started attacking her husband with axe and club. She was also attacked, she also received injuries and was also medically examined. Her evidence stands corroborated by the evidence of PW-4 Dr.K.S. Paikra, who has stated in his evidence that he conducted the postmortem on the body of deceased and found that there were 15 incised wounds and swelling on the chest in the size of 3" circle, clotted blood was present. Injury Nos.1 to 15 were inflicted by sharp and blunt edged weapon and Injury No.16 was inflicted by hard and blunt object. Occipital, temporal and nasal bones were found ~~cut~~ fractured. Brain membrane was also found cut and 2nd & 3rd ribs of right side of the chest were found fractured. Deceased died on account of hemorrhage and shock. Death was homicidal in nature. Doctor has further stated on 29.1.1997 at about 2.50 p.m. he also examined Kande Bai, wife of deceased Somaru @ Bulku and found five injuries on her body, there was a lacerated wound in the size of 1½" x 1 cm, other lacerated wound in the size of 3"x1cm, even the left ear lacerated wound was in the size of 1cm x ½ cm on the Pinna of left ear. There was swelling on the left side of

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face and an abrasion in circle of 3" on the chest. All the injuries were caused by sharp and blunt object. Presence of Kade Bai is established from the fact that she also sustained injuries and she has categorically stated that accused persons attacked her. Therefore, the evidence of Kade Bai is corroborated by the medical evidence and there is no reason to disbelieve the evidence of Kade Bai which inspires the confidence of the Court.

As far as the non-examination of independent witnesses is concerned, Kade Bai has stated that nobody came in the house and moreover, Kade Bai is the injured eyewitness to the incident and there is no reason to disbelieve her testimony. She has also stated that there was a motive behind the assault in question, as some land dispute was there between the deceased and accused persons.

As both the accused/appellants came together and attacked together that too mercilessly, as a result of which Somaru @ Bulku died instantaneously, therefore, the intention of the accused persons to commit the murder of Somaru @ Bulku was evident and writ large. As such, we do not find any illegality and infirmity in the judgment of the trial court and the same is based on the legal evidence.

In the result, we do not find any substance in this appeal, same is liable to be dismissed and it is, accordingly, dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

Roshan/-

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